
SUBSTITUTE HOUSE BILL 1057

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Hatfield, Buck, Blake and Kessler)

READ FIRST TIME 02/07/03.

1 AN ACT Relating to commercial fishing violations; amending RCW
2 77.15.700; adding new sections to chapter 77.15 RCW; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1)(a) The legislature finds that existing
6 law as it relates to the suspension of commercial fishing licenses does
7 not take into account the real-life circumstances faced by the state's
8 commercial fishing fleets. The nature of the commercial fishing
9 industry, together with the complexity of fisheries regulations, is
10 such that honest mistakes can be made by well-meaning and otherwise
11 law-abiding fishers. Commercial fishing violations that occur within
12 an acceptable margin of error should not result in the suspension of
13 fishing privileges. Likewise, fishers facing the possibility of
14 license suspension or revocation deserve the opportunity to explain any
15 extenuating circumstances prior to having his or her professional
16 privileges suspended.

17 (b) The legislature intends, by creating the license suspension
18 review committee, to provide a fisher with the opportunity to explain
19 any extenuating circumstances that led to a commercial fishing

1 violation. The legislature intends for the license suspension review
2 committee to give serious considerations to the case-specific facts and
3 scenarios leading up to a violation, and for the license suspension
4 review committee to only issue license suspensions when the facts
5 indicate a willful act that undermines the conservation of fish stocks.
6 Frivolous violations should not result in the suspension of privileges,
7 and should be punished only by the criminal sanctions attached to the
8 underlying crime.

9 (2)(a) The legislature further finds that gross abuses of fish
10 stocks should not be tolerated. Individuals convicted of even one
11 violation that is egregious in nature, causing serious detriment to a
12 fishery or the competitive disposition of other fishers, should have
13 his or her license suspended and revoked.

14 (b) The legislature intends for the license suspension review
15 committee to take egregious fisheries' violations seriously. When
16 dealing with individuals convicted of only one violation, the license
17 suspension review committee should only consider suspension for
18 individuals that are convicted of violations that are of a severe
19 magnitude and show a wanton disregard for the public's resource.

20 **Sec. 2.** RCW 77.15.700 and 2001 c 253 s 46 are each amended to read
21 as follows:

22 The department shall impose revocation and suspension of privileges
23 upon conviction in the following circumstances:

24 (1) If directed by statute for an offense;

25 (2) If the department finds that actions of the defendant
26 demonstrated a willful or wanton disregard for conservation of fish or
27 wildlife. Such suspension of privileges may be permanent. This
28 subsection (2) does not apply to violations involving commercial
29 fishing;

30 (3) If a person is convicted twice within ten years for a violation
31 involving unlawful hunting, killing, or possessing big game, the
32 department shall order revocation and suspension of all hunting
33 privileges for two years. RCW 77.12.722 or 77.16.050 as it existed
34 before June 11, 1998, may comprise one of the convictions constituting
35 the basis for revocation and suspension under this subsection;

36 (4) If a person is convicted three times in ten years of any

1 violation of recreational hunting or fishing laws or rules, the
2 department shall order a revocation and suspension of all recreational
3 hunting and fishing privileges for two years((+

4 ~~(5) If a person is convicted twice within five years of a gross~~
5 ~~misdemeanor or felony involving unlawful commercial fish or shellfish~~
6 ~~harvesting, buying, or selling, the department shall impose a~~
7 ~~revocation and suspension of the person's commercial fishing privileges~~
8 ~~for one year. A commercial fishery license revoked under this~~
9 ~~subsection may not be used by an alternate operator or transferred~~
10 ~~during the period of suspension)).~~

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.15 RCW
12 to read as follows:

13 (1) If a person is convicted of two or more qualifying commercial
14 fishing violations within a three-year period, the person's privileges
15 to participate in the commercial fishery to which the violations
16 applied may be suspended by the director for up to one year. A
17 commercial fishery license that is suspended under this section may not
18 be transferred after the director issues a notice of suspension, or
19 used by an alternative operator or transferred during the period of
20 suspension, if the person who is the subject of the suspension notice
21 is the person who owns the commercial fishery license.

22 (2) For the purposes of this section only, "qualifying commercial
23 fishing violation" means either:

24 (a) A conviction under RCW 77.15.500, 77.15.510, 77.15.520,
25 77.15.530, 77.15.550(1)(a), 77.15.570, 77.15.580, or 77.15.590;

26 (b) A gross misdemeanor or felony involving commercial fish
27 harvesting, buying, or selling that is unlawful under the terms of the
28 license, this title, or the rules issued pursuant to this title, if the
29 quantity of unlawfully harvested, possessed, bought, or sold fish,
30 other than shellfish, groundfish, or coastal pelagic species of
31 baitfish totals greater than six percent, by weight, of the harvest
32 available for inspection at the time of citation and the cumulative
33 value of the unlawfully harvested fish is more than two hundred fifty
34 dollars at the time of citation;

35 (c) A gross misdemeanor or felony involving commercial groundfish
36 or coastal pelagic baitfish harvest, buying, or selling that is
37 unlawful under the terms of the license, this title, or the rules

1 issued under this title, if: (i) The quantity of unlawfully harvested,
2 possessed, bought, or sold groundfish or coastal pelagic baitfish
3 totals greater than ten percent, by weight, of the harvest available
4 for inspection at the time of citation and has a cumulative value
5 greater than five hundred dollars; or (ii) the quantity, by weight, of
6 the unlawfully commercially harvested groundfish or coastal pelagic
7 baitfish is ten percent greater than the landing allowances provided
8 under rules adopted by the department for species categorized as over-
9 fished by the national marine fisheries service; or

10 (d) A gross misdemeanor or felony involving commercial shellfish
11 harvesting, buying, or selling that is unlawful under the terms of the
12 license, this title, or the rules issued pursuant to this title, if the
13 quantity of unlawfully harvested, possessed, bought, or sold shellfish:
14 (i) Totals greater than six percent of the harvest available for
15 inspection at the time of citation; and (ii) totals fifty or more
16 individual shellfish.

17 (3)(a) The director may refer a person convicted of one qualifying
18 commercial fishing violation to the license suspension review committee
19 if the director feels that the qualifying commercial fishing violation
20 was of a severe enough magnitude to justify suspension of the
21 individual's license renewal privileges.

22 (b) The director may refer any person convicted of one egregious
23 shellfish violation to the license suspension review committee.

24 (c) For the purposes of this section only, "egregious shellfish
25 violation" means a gross misdemeanor or felony involving commercial
26 shellfish harvesting, buying, or selling that is unlawful under the
27 terms of the license, this title, or the rules issued pursuant to this
28 title, if the quantity of unlawfully harvested, possessed, bought, or
29 sold shellfish: (i) Totals more than twenty percent of the harvest
30 available for inspection at the time of citation; (ii) totals five
31 hundred or more individual shellfish; and (iii) is valued at two
32 thousand five hundred dollars or more.

33 (4) A person who has a commercial fishing license suspended or
34 revoked under this section may file an appeal with the license
35 suspension review committee pursuant to section 4 of this act. An
36 appeal must be filed within thirty-one days of notice of license
37 suspension or revocation. If an appeal is filed, the suspension or
38 revocation issued by the department does not take effect until after

1 the license suspension review committee has come to a final conclusion.
2 If no appeal is filed within thirty-one days of notice of license
3 suspension or revocation, the right to an appeal is considered waived.
4 All suspensions ordered under this section take effect either thirty-
5 one days following the conviction for the second qualifying commercial
6 fishing violation, or upon a final decision ordered by the license
7 suspension review committee, whichever is later.

8 (5) A fishing privilege suspended under this section is in addition
9 to the statutory penalties assigned to the underlying crime.

10 (6) For the purposes of this section only, the burden is on the
11 state to show the dollar amount or the percent of a harvest that is
12 comprised of unlawfully harvested, bought, or sold individual fish or
13 shellfish.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.15 RCW
15 to read as follows:

16 (1) The license suspension review committee is created. The
17 license suspension review committee may only hear appeals from
18 commercial fishers who have had a license revoked or suspended pursuant
19 to section 3 of this act.

20 (2)(a) The license suspension review committee is composed of five
21 voting members and up to four alternates.

22 (b) Two of the members must be appointed by the director and may be
23 department employees.

24 (c) Three members, and up to four alternates, must be peer-group
25 members, who are individuals owning a commercial fishing license issued
26 by the department. If a peer-group member appears before the license
27 suspension review committee because of a qualifying commercial fishing
28 violation, the member must recuse himself or herself from the
29 proceedings relating to that violation. No two voting peer-group
30 members may reside in the same county. All peer-group members must be
31 appointed by the commission, who may accept recommendations from
32 professional organizations that represent commercial fishing interests
33 or from the legislative authority of any Washington county.

34 (d) All license suspension review committee members serve a two-
35 year renewable term.

36 (e) The commission may develop minimum member standards for service

1 on the license suspension review committee, and standards for
2 terminating a member before the expiration of his or her term.

3 (3) The license suspension review committee must convene and make
4 a final decision on a license renewal suspension within three months of
5 referral from the department.

6 (4) The license suspension review committee shall collect the
7 information and hear the testimony that it feels necessary to decide on
8 the proper length, if any, of a suspension of a commercial license.
9 The decisions may be based on extenuating circumstances presented by
10 the individual convicted of the qualifying commercial fishing violation
11 or considerations of the type and magnitude of violations that have
12 been committed by the individual. The maximum length of any suspension
13 may not exceed one year.

14 (5) All decisions of the license suspension review committee must
15 be decided by a majority vote of all voting members. Alternate
16 committee members may only vote when one of the voting members is
17 unavailable, has been recused, or has decided not to vote on the case
18 before the committee. Nonvoting alternates may be present and may
19 participate at all license suspension review committee meetings.

20 (6) All decisions of the license suspension review committee are
21 final, except for judicial review.

22 (7) Members of the license suspension review committee serve as
23 volunteers, and are not eligible for compensation other than travel
24 expenses pursuant to RCW 43.03.050 and 43.03.060.

25 (8) Staff of the license suspension review committee must be
26 provided by the department.

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